

CRS Report for Congress

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Jerusalem: Legislation to Move the U.S. Embassy

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Summary

The U.S. embassy in Israel is in Tel Aviv. Israel claims Jerusalem is its capital. Many Members of Congress want the United States to move its embassy to Jerusalem. The CRS short report describes recent legislation affecting the embassy move, including P.L. 104-45 that compels the President to establish an embassy in Jerusalem by the end of May 1999. The Administration opposes moving the embassy until Palestinian and Israeli negotiators have an agreement on the final disposition of the city. The report will be updated as warranted. Related CRS products include CRS Report 94-755F, *Jerusalem*, and CRS Issue Brief 91137, *The Middle East Peace Talks*.

Background

Because Jews, Christians, and Muslims held (and continue to hold) Jerusalem sacred, the United Nations General Assembly recommended, in Resolution 181 of November 27, 1947, that Jerusalem be internationalized under a "corpus separatum" rather than being allocated to either the Jewish or Arab states to be created in Palestine. The United States and most nations accepted an internationalized Jerusalem as the best way to resolve the conflict over the city's political future. The United Nations drafted a Statute for Jerusalem in April 1948, and passed resolutions 194 of December 1948 and 303 of December 1949 reconfirming the U.N. recommendation for an internationalized Jerusalem. But, as a result of the 1948-1949 war in which Israel seized the western portion of the city and Jordan seized the eastern portion, most governments, the United States among them, recognized that the Arabs and Israelis had created claims to the city or parts of it that superseded the United Nations internationalization scheme. Only Pakistan and the United Kingdom recognized Jordan's 1950 annexation of the West Bank (including east Jerusalem) and no government recognized Israel's 1950 claim that west Jerusalem was its capital or Israel's annexation of eastern Jerusalem following the 1967 war. Only two countries, Costa Rica and El Salvador, have their embassies to Israel in Jerusalem.

Jerusalem is listed as one of the issues to be discussed in the final status peace talks that began in May 1996, but were delayed by the Israeli elections and political uncertainties of the time, and have not resumed. Israel claims that Jerusalem will not be redivided, as it was between 1948 and 1967, and that undivided Jerusalem is its capital. The Palestinian Arabs want Israel to withdraw from east Jerusalem, the area seized from Jordan in 1967, so that east Jerusalem can become the capital of an independent Palestinian state.

United States Policy Toward Jerusalem

The United States has changed its policy toward Jerusalem as events changed the status of the city. The United States voted for U.N. Resolution 181 of 1947 that called for the creation of the corpus separatum, voted for Resolutions 194 on December 11, 1948, that repeated the call for a corpus separatum, but altered policy to vote against Resolution 303 on December 9, 1949, because the United States recognized that Israel and Jordan had created, through their occupation of parts of the city, a political presence in Jerusalem. Technically, the United States had supported an international Jerusalem, but as a practical matter, the United States, along with many other governments, recognized both Israeli and Arab claims to a political role in the city. The United States opposed Israel's 1948 claim of sovereignty over the western portion of the city, Israel's 1950 declaration that Jerusalem was its capital, Jordan's 1950 annexation of east Jerusalem, and Israel's 1967 annexation of east Jerusalem. Since 1967, successive U.S. Administrations have maintained that east Jerusalem is part of the West Bank occupied territories, that the future of Jerusalem should be a subject of Israeli-Arab negotiations, that the city's fate not be decided by unilateral actions, and that the city should remain united.

In 1994, some observers interpreted a U.S. vote at the United Nations as signaling a change in U.S. policy toward Jerusalem that moved Washington somewhat closer to Israel's view of Jerusalem. On March 18, 1994, the United States abstained on a U.N. Security Council vote concerning the Middle East because the draft resolution called the occupied territories the "occupied Palestinian territories," a phrase that could be interpreted, in the U.S. view, as implying sovereignty. The United States also objected to the resolution listing Jerusalem as occupied territory subject to the Fourth Geneva Convention of 1949¹. U.S. Ambassador Albright reaffirmed that the United States held the view that the Fourth Geneva Convention applied to Jerusalem, but opposed specifying Jerusalem in the resolution.

United States actions in March 1997 prompted more scrutiny of U.S. policy toward Jerusalem. On March 7, 1997, the United States vetoed a Security Council resolution condemning the Israeli settlement at Abu Ghanaym/Har Homa, east Jerusalem, because,

¹The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949. TIAS 3365. 6 UST 3517. Most observers believe Israeli settlements in Jerusalem and the other occupied territories are illegal under Paragraph six of Article 49, which states that the occupying power, in this case Israel, shall not deport or transfer its civilian population into the occupied territories. Israel maintains that it is not an occupying power because the West Bank and Gaza were not the sovereign territory of another country prior to the June 1967 Israeli occupation. Jordan claimed sovereignty over the West Bank and Jerusalem, but only Pakistan and the United Kingdom recognized the Jordanian claim. No nation claimed sovereignty over the Gaza Strip, although Egypt administered the territory between 1948 and 1967.

in the words of U.S. Ambassador Richardson, the resolution could impede the peace process. Proponents of the resolution moved to the General Assembly, where a similar resolution passed by a vote of 130 to 2 (Israel, the United States) with 2 abstentions on March 13, 1997. On March 21, 1997, the United States vetoed another Security Council resolution demanding that Israel stop the settlement construction because, in the U.S. view, the resolution might interfere with the peace process.

Congressional Action

In addition to numerous congratulatory resolutions commemorating the founding of Jerusalem, Israel's unification of the city in 1967, Israel's annexation of east Jerusalem, and resolutions of condolence following terror incidents in the city, Congress has passed legislation that acknowledges Jerusalem as Israel's capital, calls for the continued unification of the city, and voices the opinion that the U.S. embassy to Israel be moved from Tel Aviv to Jerusalem. For example, H. Con. Res 290, passed by the House of Representatives on April 24, 1990, and S. Con. Res 106, passed by the Senate on March 22, 1990, stated that ". . . Congress acknowledges that Jerusalem is and should remain the capital of the State of Israel."

In 1986, when Members of the House, Senate, and the Administration could not agree on the legislative language, location, or timing of moving the embassy from Tel Aviv to Jerusalem, they compromised by prohibiting construction of an embassy. Section 414 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986,² states that no funds may be obligated for site acquisition, development, or construction of a U.S. embassy in Israel, Jerusalem, or the West Bank. In 1987, Section 130 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,³ repeated Section 414. In 1988, the Senate and the Administration still failed to agree, and accepted a compromise that reversed the "no embassy" ruling in Sections 414 and 130. Section 305 of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act of 1989,⁴ overrode Sections 414 and 130, and stated that two facilities were to be built simultaneously, one in Jerusalem or the West Bank and one in Tel Aviv, either of which could be used as an embassy. Congress did not authorize or appropriate funds for the two facilities.

Identical bills introduced in 1995, S. 770 and H.R. 1595, called for the United States to recognize Jerusalem as Israel's capital, and to move the U.S. embassy to Jerusalem by May 31, 1999. The bills provided funding for site surveys and construction costs of building a new embassy. Congress passed a similar bill, S. 1322, and sent it to the President, but President Clinton sent the bill to the Archives unsigned; the bill became law after ten days on November 8, 1995, P.L. 104-45.

A Summary of P.L. 104-45

²P.L. 99-399 (H.R. 4151) August 27, 1986. 100 Stat.868, 22 USC 4862

³P.L. 100-204 (H.R. 1777) December 22, 1987. 101 Stat.1344.

⁴P.L. 100-459 (H.R. 4782) October 1, 1988. 102 Stat. 2208.

Section 3 of P.L. 104-45 states that U.S. policy should recognize that Jerusalem is the undivided capital of Israel, and that the U.S. Embassy in Israel should be established in Jerusalem no later than May 31, 1999. Section 3(b) states that funding for the State Department's building acquisition and maintenance account will be cut in half in FY1999 if the United States has not opened an embassy in Jerusalem by that time. Section 4 authorizes \$25 million in FY 1996 and \$75 million in FY 1997 for construction of an embassy in Jerusalem. Section 5 requires the Secretary of State to report to the Congress on a plan to open an embassy in Jerusalem. Section 6 calls for semi-annual reports to the Congress on progress in implementing the law. Section 7 grants the President the authority, beginning on October 1, 1998, to waive the funding block in Section 3(b) for six months if the President determines that the waiver is necessary to protect the national security interests of the United States. The waiver may be extended once for an additional for six months.

Congress and the Executive Branch: Differing Opinions on Authority over the Embassy

The United States has not recognized Jordan's or Israel's unilateral action in claiming part or all of Jerusalem, and accepts the contention that the future of Jerusalem should be negotiated among the interested parties. Israel and the Palestinians agreed to negotiate the status of Jerusalem. It has been the position of the current and previous Presidents that the United States should not consider moving the embassy to Jerusalem until the Palestinians and the Israelis have completed their negotiations and have reached an agreement on the future status of the city. Moving the U.S. embassy from Tel Aviv to Jerusalem before those negotiations are completed might diminish the U.S. role as a neutral broker in the peace process, and might support Israel's claim to all of the city and cause the Arab/Muslim side to end negotiations. Some Members of Congress apparently want to support Israel's claim to Jerusalem despite possible Arab or Muslim reaction. Moving the embassy might be seen as a way to help guarantee that Israel will keep control over the whole city.

Although not in the forefront of the current debate, there is recurring Constitutional argument as well. Traditionally, the executive branch has maintained that the Constitution gives the President the authority to formulate and implement foreign policy, and that the location and operation of embassies are foreign policy issues under the President's purview. The President acknowledges that the Palestinians and Israelis have agreed to negotiate the status of Jerusalem, and the President has made a foreign policy decision that the United States should avoid taking actions that might predetermine the outcome of those negotiations. Also, some Constitutional authorities have speculated that the Congress does not have the Constitutional authority to compel the President to change his foreign policy. Traditionally, Congress has maintained that the Constitution gives Congress a role in setting and implementing foreign policy (consent to treaties, approve ambassadors) and that the exercise of that role, along with the congressional control over the purse strings, compels the President to cooperate with Congress. The Constitution gives Congress the authority to pass legislation and directs the President to implement the law. Congress has passed a law that the embassy be established in Jerusalem and the President is bound to enforce the law. Obviously, the President cannot build an embassy without Congress authorizing and appropriating the funds, but a President may argue that Congress cannot compel a President to build an embassy. It is not likely that the

argument between the President and the Congress over their respective roles in foreign policy will be resolved soon.

Problems in Moving the U.S. Embassy From Tel Aviv to Jerusalem

The Clinton Administration, similar to previous Administrations, maintains that there are several reasons why it may be difficult to establish an embassy in Jerusalem as required in P.L. 104-45.

Diplomatic. The United States recognizes that there are competing claims to the city, political claims among Israel and the Palestinians, and perhaps Jordan, and religious claims among Jews, Muslims and Christians. The United States maintains the position that the future status of Jerusalem must be the subject of negotiations among the interested parties, and that unilateral actions by any government that might predetermine the future of the holy city are unacceptable. In keeping with that policy, the United States opposed Jordanian and Israeli actions regarding Jerusalem. Successive U.S. Administrations have maintained that moving the embassy from Tel Aviv to Jerusalem would support Israel's claim to all of the city and would undermine the negotiations intended to resolve the future of the city.

Time. The Department of State estimates that construction of an embassy will take a minimum of 6 years and a maximum of 10 years from first steps (architect/engineering drawings, soil testing, preliminary planning) through all the stages to the final finishing and occupancy. P.L. 104-45 became law on November 8, 1995, and called for the U.S. embassy to be relocated to Jerusalem by May 31, 1999, three and one half years later, too short a period to construct an embassy. With construction of a new embassy an unlikely prospect, the Department of State was left with the options of buying or leasing an existing facility, exchanging the present facility in Tel Aviv for an existing facility in Jerusalem, or converting the existing Jerusalem consulate into an embassy. The time allowed for the relocation might not allow for extensive renovations to an existing facility (the primary renovations needed would be security related). According to the semi-annual reports to Congress, the Department of State has been investigating the availability of property, both for purchase and for rent, that might serve as an embassy, and that a move could be accomplished "quickly" (within one year?).

Land. More than 90% of the land in Israel, including land in western Jerusalem, is owned by the state or by the Jewish National Fund, a charitable institution that holds land in perpetuity for the benefit of the Jewish people. Consequently, none of the Government-owned or JNF-owned land may be sold, only leased. The United States and Israel signed an agreement on 18 January 1989, providing for an exchange of the present site of the U.S. embassy in Tel Aviv for another site in Tel Aviv suitable for a U.S. diplomatic building, and for a 99-year renewable lease at one dollar per year for a site in west Jerusalem called the Allenby Tract. The United States could build a diplomatic facility, either an embassy or a consulate, on the 7.75-acre Allenby Tract. Israel offered the United States a Tel Aviv property to be exchanged for the present embassy site, but the United States rejected the new site because of security flaws. Israel has not offered a replacement.

Security. One set of problems faced by the United States in selecting an embassy site is the security of the building and its occupants. According to the Department of State,

the Allenby tract offered by Israel in southeast Jerusalem poses such problems. Although the Department will not discuss publicly the specific nature of the problems, one problem appears to be the construction or location of nearby structures that overlook the Allenby tract, thereby posing a potential security threat to an embassy built there.

Conflicting Claims. Palestinians claim that the Allenby Tract is “Waqf” land; that is, land donated to a religious trust for the benefit of all Muslims. The Palestinians claim that Israel had no right to lease the land to the United States for an embassy. Department of State spokesmen say that they do not believe the Waqf claim has merit, but recognize that there is a conflicting and as yet unresolved claim to the land.

Jerusalem Under Israeli Occupation

